

# Detroit cash bail reforms to strike at racial inequality

By Aaron Morrison | AP

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Michigan's largest district court and bail reform advocates agreed Tuesday to settle a federal class-action lawsuit over cash bail practices, which activists say routinely and unconstitutionally jail poor and working class defendants despite evidence of their inability to pay.

Both sides say the reforms strike at racial inequality in the criminal legal system. On any given day in Wayne County, which includes Detroit, the nation's Blackest city, nearly three-quarters of those jailed are Black, a proportion much higher than their share of the population.

The agreement requires the court to reform bail practices, including limiting its ability to impose unaffordable bail on defendants. Advocates say it could be a model for court systems nationwide, where race and wealth are significant factors in the administration of justice.

Detroit's 36th District Court, the American Civil Liberties Union and The Bail Project, a nonprofit that pays bail for people in need, said the status quo wreaks unnecessary havoc on defendants' jobs, homes and families.

"This is a historic agreement that we believe can and should be a template for how courts around the country can adapt their bail practices to what is lawful, constitutional and sensible," said Phil Mayor, senior staff attorney for the Michigan ACLU.

Chief Judge William McConico of the 36th District Court said settling the class-action lawsuit, filed in 2019 just before he became the chief, presented an opportunity to show that law enforcement and activists can work together to change the criminal legal system.

"Other African American cities will be able to point to what one of the largest district courts in the country is doing to address this issue," said McConico, who is Black. "That's why it is so important that this is starting in a major Black city, that it is not being rolled out in a suburban city or a small court."

The reforms, shared with The Associated Press exclusively ahead of Tuesday's announcement, do not bar judges from imposing cash bail, especially if defendants are deemed a flight risk or a danger to the public. However, all Detroit judges and magistrates must say on the record how imposing bail would protect the community or prevent a failure to appear. Judges must also make an on-the-record determination as to how much a defendant can afford to pay.

The parties also agreed that any defendant who is at 200% of the federal poverty level or less is to be assumed unable to post cash bond. According to the 2022 federal guidelines, 200% of the poverty level is annual earnings of roughly \$27,000 for an individual and \$55,000 for a family of four.

"This should largely eliminate the practice of imposing what may seem to some like small amounts of cash bail, which effectively serve as a jail sentence for somebody who hasn't yet been convicted of a crime," Mayor said.

The sides also agreed to new rules stipulating when and what triggers a bail redetermination hearing, if a defendant's bail has been set but goes unpaid. The hearing would allow for a bail amount to be reduced or withdrawn altogether if it is later deemed unaffordable.

The reforms in Detroit come as some states and local jurisdictions across the U.S. have either rolled back or are considering rollbacks of bail reforms in response to a pandemic-era increase in crime. From San Francisco to New York City and cities in between, rhetoric around the uptick in violence and nuisance crimes has slowed political momentum despite bipartisan agreement that mass incarceration is expensive and has no proven positive effect on public safety.

